

Estate of Philip J. Mulhern

v.

Town of Bristol

Docket No.: 15973-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$98,100 (land \$73,300; buildings \$24,800) on a .33-acre lot with a single-family house (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) a Century-21 market analysis indicates a market value range of \$82,900 to \$85,900; and

(2) the Town's installation of swim line a distance out from the shore interferes with the Taxpayer's use and enjoyment of waterfront.

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The Town argued the assessment was proper because:

- (1) the Taxpayer's market analysis lists a "giveaway" price and is not an estimate of market value; and
- (2) the Property has greater use of and proximity to Newfound Lake than the comparables contained in the market analysis.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not prove that its assessment was excessive.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1995 level of assessment was 108% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$90,833 (\$98,100 assessment ÷ 1.08 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less

than the \$90,833 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The board finds that the Taxpayer's market analysis is not conclusive evidence of market value. First, the Town's criticism that a number of the comparables are more distant from or have less use of the waterfront is valid.

The realtor apparently made no adjustments for that fact, other than choosing a marketing range generally higher than the comparable properties' selling prices. Further, the dispute between the Taxpayer and the Town over the usage of the water frontage, while definitely a factor in valuing the Property, apparently did not and does not preclude the owner from some use of

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the waterfront. (The Taxpayer's representative testified that in 1996 a permit was obtained from the New Hampshire Wetlands Board for the installation of a dock).

Lastly, the Town's equalized assessed value of approximately \$91,000 does not appear excessive compared to the Taxpayer's market analysis if adjustments are made for the Property's proximity and use of the waterfront.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new

evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin Henderson, representative for the Estate of Philip Mulhern, Taxpayer; and Chairman, Selectmen of Bristol.

Date: April 11, 1997

Valerie B. Lanigan, Clerk

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